THE CRIMINAL PROCEDURE CODE AMENDMENT BILL.

Mr. Krishnaswamy Rao in asking for leave to introduce a Bill for the amendment of the Criminal Procedure Code,—V of 1067, said.—

Act No. III of 1894 has amended the Indian Penal and Criminal Procedure Codes so as to admit of certain grave offences committed in Native States being treated by British authorities as offences committed in British India, in order to facilitate the arrest and conviction of fugitive offenders. This Government has to reciprocate the action of the Government of India by making corresponding provisions with reference to offenders who, after committing offences in British India, seek refuge in this country. The provisions of Act No. III of 1894, in so far as they relate to the Penal Code, have been incorporated into the Penal Code Bill, which was read for the third time before this Council. The other provisions have to be introduced into our Criminal Procedure Code.

The Penal Code Bill has introduced several new provisions not to be found in the Indian Penal Code. These new provisions require certain modifications of the Criminal Procedure Code. Experience has also suggested some amendments. The passing of the Penal Code Bill into law will render necessary many verbal corrections in the Code of Criminal Procedure and the Schedule No. II attached to it. To meet these objects, this Bill is drafted.

Section 1 of the Bill is merely formal.

Section 2, first part of section 3, sections 5, 7, 9, 11, 12 and 13 and part of section 18 make the verbal corrections which the passing of the Penal Code Bill into law would necessitate.

The second part of section 3 and sections 4 and 6 introduce into our Code the corresponding provisions of Act III of 1894.

The object of section 8 is to make the offence of Criminal Breach of Trust by a public servant triable by the Court having jurisdiction over the place where he should render accounts of the money entrusted to him. In the case of officers whose duty it is to make disbursements in various places, it is often not easy to ascertain where the embezzlement took place. Moreover, the place where the accounts are to be rendered would in many places be convenient to all parties concerned, as it is there that the evidence for or against the charge is, as a rule, accessible.

Section 10 requires the sanction of Government for prosecution of the offences punishable under sections 111, 164 and 182 of the Penal Code Bill. They are offences against the person of the Sovereign, disobedience to orders of Government relating to places of public worship and processions and sexual misconduct of public servants towards those under their custody or control. The previous sanction of Government is considered necessary to prevent frivolous charges being preferred by designing people with the sole object of creating a public scandal.

Section 14 authorizes the Dewan to sanction the presentation of an appeal against a judgment of acquittal and its withdrawal. The preferring of an appeal against a judgment of acquittal presupposes that the sanctioning authority has come to the conclusion that the offender is liable to punishment. An offender punished by the highest Court in the land on such appeal has the right of seeking the exercise of the royal prerogative of mercy in his favour. It is, therefore, necessary that there should be no appearance of the Sovereign having prejudged the case by sanctioning the presentation of an appeal against a judgment of acquittal. The absence of a power to withdraw an appeal was sorely felt in two cases that came before the High Court.

Sections 15 and 16 authorize the appellate Courts to give notice of appeals to the original complainants in summons or compoundable cases and to permit the parties to such cases to compound the offence in the appellate stage of the case. They are in conformity with the practice of some Courts. The object of these sections is to obtain the requisite legal sanction. These cases are in their nature semi-civil. Except on the complaint of the injured party, no Court is competent to take cognizance of them. The original Court is bound to allow the parties to compound the offence. There seems to be no good reason for denying to the parties

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the exercise of this right in the appellate stage of the case. In civil cases, parties are allowed to compromise even in the 2nd appellate Court; and in the way of an inducement to voluntary and amicable settlement of disputes, the Court Fees Regulation authorizes the refund of one-half of the Court fees paid on the appeal memo. Compoundable offences, as already observed, are in the nature of civil wrongs. When an offence of this kind is compounded there will, as a rule, be no further litigation. To check the multiplication of litigation is, by itself, a great public advantage. The amendment as now proposed, reserves to the Appellate Courts the power of refusing permission in any particular case for reasons to be recorded. This will be a sufficient check against the abuse of the right by the litigants.

Section 17 proposes to empower the High Court to punish summarily the offences committed under sections 168, 171, 172, 173, 183, 226 and 502 of the Penal Code with a fine not exceeding Rupees 1,000 or simple imprisonment for a term not exceeding 6 months, or both. In common with a 3rd grade Munsiff or a 3rd class Magistrate, the High Court *have now* only the power of punishing summarily the offences falling within sections 168, 171, 172, 173 and 226 of the Penal Code with a fine of Rs. 200 or with simple imprisonment for one month in default of payment of the fine. The High Courts in British India possess *unlimited* and *undefined power* for punishing *summarily* with fine and imprisonment those who act in contempt of their authority, in whatever shape it may be committed. The case of the Judges of the Calcutta High Court *versus* Surenderanath Banerjee will give some idea of the power possessed by the High Courts in India. The absence of the like power in the local High Court is sorely felt. But it is not my intention to ask the Council to confer on it the *extensive powers* exercised by the High Courts in British India. I would only apply for such additional and *well defined* powers as are *absolutely* necessary to maintain the dignity and prestige of the highest tribunal in the land. My proposals are to add the offences of 'threat' and 'defamation' as defined in the Penal Code to those which are already summarily punishable by the High Court and to increase the power of punishment consistently with the rank and position of the Court. You will have the safeguards that this power shall not be exercised by a single Judge; and that the offender may claim a trial by *a Full Bench*. The Court is also empowered to excuse the offender on tender of apology. The maintenance of the dignity and prestige of the supreme Court in the land demands the additional power asked for.

Part of section 18 makes the amendments suggested by section 17 to sections 360, 361 and 363 of the Criminal Procedure Code.

Section 19 removes the doubt felt as to whether a Criminal Court could pass orders relating to property produced in evidence with reference to which no offence is proved. The court should have the power of ordering the disposal of such property according to the circumstances of each case.

Section 20 declares that no trial properly held should be invalidated on account of the irregularity in the preliminary enquiry. The British Indian law is in conformity with this section (see sec. 532 of the British Criminal Procedure Code.)

The schedule refered to in section 21 makes the necessary verbal amendments with reference to the Penal Code Bill and makes the requisite provisions as regards the offences not found in the Indian Penal Code. The only amendment which it is proposed to make in the schedule and which may be said to involve a question of principle is that the offence of lurking house-trespass or house-breaking by night with intent to commit theft may also be tried by a 2nd class Magistrate. These cases are now 1st class or Sessions cases. On account of the long distance of the Courts of the 1st class Magistrates from many places where these offences are committed and the consequent inconvenience, aggrieved parties do not often prosecute offenders especially where the property lost or damaged is not of much value. Even the person who by pushing aside a *tatti* placed against a doorway enters a hut after sunset and steals therefrom a morsel of food is, in the eye of law, a housebreaker. No Court would even think of giving him the maximum punishment which a second class Magistrate could award. There will be very few cases of theft in a dwelling which could not be either lurking house-trespass or house-breaking. In a majority of these cases, the punishment awarded is far below the limit assigned to a second class Magistrate. Public convenience and administration of criminal justice alike demand the modification proposed. With these observations, I beg to move for leave to introduce the Bill.

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The motion was put and agreed to.

Mr. Krishnaswamy Rao then introduced the Bill and moved that the publication of the Bill be postponed until it is considered by the Select Committee.

Seconded by Mr. Thanu Pillai.

Carried.

Mr. Krishnaswamy Rao moved that the Bill be referred to a Select Committee consisting of Messrs. Thanu Pillai, Prince, Rama Vurma and the mover.

Seconded by Mr. Nagam Aiya.

Carried.

THE GENERAL CLAUSES BILL.

Mr. Thanu Pillai.—As I have already remarked this is a purely technical Bill and is a close adaptation of the corresponding Madras Act. The Select Committee has not found it necessary to make any important alterations. The few modifications made are dwelt upon in the Report. I would touch on some of them.

In section 2—Interpretation-clause—the words 'now in force or' have been added in view to extend the definitions to existing Regulations. There is, it will be noted, the saving clause "unless there be something repugnant in the subject or context" which is a sufficient safe-guard against any possible misconstruction on this account.

The definition of the expression 'Our Government' has been dropped. The Select Committee thought it superfluous, the connotation being well understood.

'Standing crops' have been taken out of the category of immovable property. The object is to remove the needless inconvenience of following the elaborate procedure provided for dealing with immovable property in execution of decrees.

The definition of 'sign' has been modified so as to denote a 'mark' not only in the case of those who are unable to write their names but others as well. Even men of education and position, it is well-known, make use of such almost mystic marks—called Oppu—for their signature.

I do not think I need trouble the Council with any observations on the remaining amendments. With these remarks I beg to present the report of the Select Committee and move that it be published in the Gazette with the Bill as amended.

The motion was put and agreed to.

The Council rose at 3-45 P. M.

SHUNGRASOOBYER,
President.

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